

The State Of Rhode Island and Providence Plantations
Public Utilities Commission

The Narragansett Bay :
Commission's General Rate : Docket No. 3905
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The Response of The Narragansett Bay Commission
to the Post Hearing Memorandum
of the Division of Public Utilities and Carriers

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The Response of The Narragansett Bay Commission
to the Post Hearing Memorandum of the Division

The Narragansett Bay Commission (the “NBC”) submits this Memorandum in response to the Post-Hearing Memorandum of the Division of Public Utilities and Carriers (“the Division”) on the sole issue of the Division’s proposal to eliminate the 7.5% cap that NBC’s management has set on payment of the health care premiums by it’s non-union employees.

I. The Standard of Proof

The NBC legal principle, fully supported by the cases of United Transit Authority v. Nunes, 209 A.2e 215 (RI 1965) and Rhode Island Consumers’ Council v. New England Telephone and Telegraph Co., 302 A.2d 757 (R.I. 1973), is that if a regulated utility’s decision on an expense is “reasonable”, the Rhode Island Public Utilities Commission (“the PUC”) is not free to substitute its own judgment on such an expense. The Division cites no case law contrary to this principle. While the Division makes several statement which appear to misrepresent NBC’s position (e.g., the Commission is “precluded” from reversing an expense within a “putative: range of reasonableness or the Commission must “invariably accept” NBC’s expense estimates, Division Memo, pp. 2, 4), both parties agree that if an expense incurred by management is reasonable it cannot be reversed by the PUC absent substantial evidences on the record that management’s judgment as to the expense is “unreasonable” (Memo, p. 2).

It is helpful to reverse the normal order and examine the Division’s evidence of “unreasonableness” as to which it make the extraordinary statement that its position is supported by the “overwhelming” record evidence. Id. at 2. If anything its evidence is underwhelming.

The Division apparently takes the position that if it shows that a different and larger co-pay for medical insurance is reasonable, that somehow demonstrates that management’s choice of a lower co-pay is unreasonable. This is certainly not the standard of proof the Division must meet.

II. The Division's "Proof" of Unreasonableness

1. The Division's initial sally to establish unreasonableness is a cite to Mr. Catlin's Direct Testimony (p. 9) where he states that "it is not unusual" for employers to require a greater co-pay than the 7.5% co-pay set by management for non-union NBC employees. The cited statement of course says nothing about whether a 7.5% co-pay is reasonable or unreasonable. The 7.5% co-pay is the same co-pay set for union employees of NBC. If anything, Mr. Catlin's quaint phrase ("it is not unusual") implies that the lower co-pay may be "usual."

2. The Division's next effort to support its contention of unreasonableness is based on the PUC Chairman's examination of Mr. Catlin at the hearing (Tr. 4/29/08, pp 75-79). It is apparent that Mr. Catlin's recommended disallowance is based on a previous split decision by the PUC on a disallowance of a 7.5% cap for non-union employees. Id at 75. That PUC decision does not establish unreasonableness. The Division is aware, as is the Chairman by his questioning of Mr. Catlin, that NBC's union employees enjoy a far greater pension benefit than non-union employees. Tr. 4.29.08 at 78-79. NBC's management decided to make health insurance co-pay the same for non-union and union employees, each of which constitute an equal number of NBC's employees. The Division apparently believes that non-union employees should consistently be given the short shrift on compensation decisions by NBC's management. See generally the pension disparity set forth in PUC Docket 3651 (the Defined Benefit Investigation) and NBC's argument at Tr. 4/29/08 at pp. 116-117.

3. Mr. Catlin makes a comparison to health insurance co-pays by "state employees." The Division cites no record evidence in this docket as to the amount of such co-pays by "state employees." Whatever the health insurance co-pays are by state employees, NBC's management obviously thought that the relevant comparison is to its own employees and management's decision to treat them equally is on its face both reasonable and fair. The number of NBC's union and non-union employees is evenly divided, each comprising approximately 120-123 employees. See PUC Data Request COM 1-5 and NBC Response thereto.

Certainly Mr. Catlin's conclusion that a 7/5% co-pay is unreasonable in light of the escalating cost of medical insurance, Division Memo, p. 6, without any supporting evidence of industry practice, is no evidence at all. One is reminded of the philosophical principle that what is gratuitously asserted is gratuitously denied.

III. NBC's Proof of Reasonableness

In response to Mr. Catlin's elimination of the 7.5% cap for the contribution by non-union employees for health insurance, based on his assertion that it is "not unusual" for employers to require a higher co-pay (Catlin Direct Testimony, p. 9), Walter Edge in his Rebuttal Testimony, at p. 5, asserted that it is well within management's rights to treat its union and non-union employees "equally" regarding health care benefit issues. He pointed out that NBC has experienced difficulties in hiring and retaining certain non-union employees due to salary and benefit differentials within the industry. *Id.* At 5. He also testified that the additional cost burden on non-union employees who perform critical functions at NBC is not justified by the relatively minor cost involved. In Mr. Edge's opinion the differing treatment to union and non-union employees is a detriment to morale.

And what was the Division's response to Mr. Edge's Rebuttal Testimony in this regard? Mr. Catlin merely stated that he supports his initial recommendation and "I am not further addressing this issue in surrebuttal." Surrebuttal Testimony at p. 2. In other words Mr. Catlin apparently believes that it is sufficient to establish that an expense is "unreasonable" by stating that "it is not unusual" for employers to require employees to bear much more than 7.5% of their health insurance premiums. Catlin Direct Testimony, p. 9.

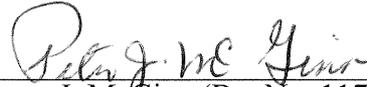
IV. Conclusion

The NBC's record defense, as well as common sense, of its management's decision to require that union and non-union employees bear an equal burden of their health

insurance premiums is both reasonable and fair. The Division has totally failed to carry its burden of showing management's decision was unreasonable.

The Narragansett Bay Commission

By its attorney,

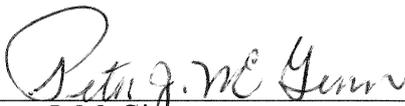


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CERTIFICATION

I hereby certify that a copy of the within Response to the Division's Post-Hearing memorandum of Law was forwarded by email to the docket's service list on the 2nd day of June, 2008 and was also sent by ordinary mail.



Peter J. McGinn